IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 16.03.2007

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Second Appeal No.840 of 1995

1. Sungappa
2. Marappa
3. Munisami
4. Muniamma
5. Maramma
6. Lakshmanama
7. Rajamma

... Appellants/Plaintiffs 2 to 4 & Nil

Vs.

1. Venkataramayya
2. Pappanna
3. Pattamma
4. Hanumanthappa

... Respondents/Defendants

PRAYER: Second Appeal filed under section 100 C.Pc against the Judgment and decree of the learned Appellate Authority (Subordinate Judge) of Krishnagiri dated 13.02.1995 in A.S.No.4 of 1991 reversing the judgement and decree of the learned District Munsif of Hosur dated 17.04.1989 in O.S.No.375 of 1984.

For Petitioners : Mr.M.V.Nicholas
For Respondents : Mr.C.R.Muralidharan

J U D G M E N T

The plaintiffs 2 to 4 in the Trial Court are the appellants and the second appeal arises from the reversing judgement. The suit filed by the plaintiffs for a declaration that they are the owners of the suit property and also for an injunction. The suit property is an extent of 30 cents of land forming part of the total extent of 1.80 acres of dry land comprised in Survey No.194, Thyaranadurgam Tharaf, Obeypalayam Village, Rayakotta S.R.D., Hosur Taluk, Krishnagiri. It is admitted case that the said 1.80 acres of land is ancestral property belonged to 3 brothers Sungappa, Pethamunusamy who have orally partitioned among them 45 years ago by which

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each of them were allotted 90 cents. The dispute is relating to the 90 cents allotted to Sungappa. The said Sungappa had 3 sons, namely, Pethachinnappa, Venkataramanaappa and Chinnamunusamy.

2. According to the plaintiffs, after the death of Sungappa the said 3 sons of Sungappa have orally partitioned among them by which each one of them were allotted 30 cents of lands. In addition to that the said Pethachinnappa from whom the plaintiffs make claim was allotted 2 Tamarind trees. Likewise Chinnamunusamy was allotted 2 Tamarind trees apart from the 30 cents. The said Pethachinnappa, who is ancestor of the plaintiffs had 3 sons, namely, Sungappa, Venkataramaiya and Munusamy.

3. According to the plaintiffs, the said 3 brothers are divided about 20 years ago by an oral partition out of which Sungappa was given 10 cents of land out of the 30 cents inherited from Pethachinnappa and Venkataramaiya was given 20 cents along with 2 Tamarind trees in Survey No.194, while the other brother Munusamy was not allotted any share, since he was given other properties. It is from the said Venkataramana who was allotted 20 cents and 2 Tamarind trees, the plaintiffs 2, 3 and 4 who are his sons, namely, Sungappa, Marappa and Munusamy, all claiming 20 cents and 2 Tamarind trees. That apart, they would also claim that they have purchased 10 cents of land allotted to Sungappa, the brother of their father, under a sale deed dated 29.09.1987 marked as Ex.A.1 and therefore, the plaintiff's claim that they are entitle for 30 cents of land along with 2 Tamarind trees comprised in Survey No.194.

4. On the other hand, the defendants who have claimed right under Venkataramanappa who is the second son of the original Sunkappa, while admitting the oral partition between the original Sungappa and Pethamunusamy by which each of them got 90 cents as stated above. They however denied the oral partition among Pethachinnappa, Venkataramanappa and Chinnamunusamy stating that Pethachinnappa was not given any share and therefore, the plaintiffs claiming from Pethachinnappa cannot have any right, also stating that the sale deed stated to have been executed by Sungappa in favour of plaintiffs 2 to 4 in respect of 10 cents under Ex.A.1 dated 29.09.1987 is not valid, since the original person from whom the claim was made namely Pethachinnappa himself was not allotted any share.

5. On the other hand it is the case of the defendants that the Venkataramanappa was allotted 60 cents while Chinnamunusamy was allotted 30 cents out of the 90 cents by Sungappa by not giving any property to Pethachinnappa. The said 60 cents allotted to Venkataramanappa was inherited by his son Mathanagiriyappa who is also stated to have purchased the remaining 30 cents along with 2 Tamarind trees allotted to Chinnamunusamy by way of sale deed dated 19.10.1944 marked as Ex.A.2 the copy of which was marked on the defendant side as Ex.B.1.

6. Therefore according to the defendants 1 and 2 who are the sons of Mathanagiriyappa and the 3rd defendant who is the wife of Mathanagiriyappa, they have inherited the entire property and the 4th defendant is the

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intending purchaser from defendants 1, 2 and 3. The plaintiffs apart from claiming the rights in respect of 10 cents based on Ex.A.1 sale deed dated 29.09.1987 executed by Chinnappa in favour of plaintiff 2 to 4 have also relied upon a mortgage deed executed by Mathanagiriyappa, namely, predecessor in title as claimed by the defendants on 04.03.1958 marked as Ex.A.3 to one Sikkamuniyappa Chetti.

7. They also would rely upon the Ex.A.2 sale deed by which Mathanagiriyappa has purchased from Chinnamunusamy, the 30 cents of land in the same survey number to show and prove that Pethachinnappa, who is the brother of Chinnamunusamy was also allotted 30 cents under the oral partition between Pethachinnappa, Venkataramanappa and Chinnamunusamy. Considering the above said facts and also relying upon Ex.A.1 which also traced the title of Pethachinnappa in respect of 30 cents and considering the recital under Ex.A.2 sale deed which also was marked as Ex.B.1 relied upon by the defendants themselves wherein it is stated that Pethachinnappa was allotted 30 cents of lands and also on the basis of Ex.A.4 Kanthayam receipt and Ex.A.5 patta pass book granted in favour of the plaintiffs, the Trial Court has decreed the suit.

8. On the other hand, the First Appellate Court while deciding against the plaintiffs and dismissing the suit held that when the defendants have denied the oral partition between Pethachinnappa, Venkataramanappa and Chinnamunusamy, the plaintiffs have failed to prove by evidence that Pethachinnappa was in fact allotted 30 cents. The learned first appellate judge also concluded that the plaintiffs have not taken any steps to prove through the Village Administrative Officer to show their possession and production of Adangal etc.

9. While admitting the Second Appeal, the following question of law was framed.

> "1. Whether the lower appellate court erred in law in reversing the well considered judgement of the trial court, on minor contradictions in the evidence of P.W.1 and non examination of village Administrative Officer, without reference to documentary evidence placed by the plaintiff which establishes that the suit property including two tamarind trees belong to the appellants/plaintiffs and the appellants/plaintiffs were in continuous possession and enjoyment of the suit property?"

10. I have heard the learned counsel for the appellants as well as the learned counsel for respondents.

11. The learned counsel for the appellants would rely upon the contents of Ex.A.2 marked as Ex.B.1 on the side of the defendants to show that the plaintiffs have proved that Pethachinnappa their predessor was in fact allotted 30 cents out of total 90 cents, which was obtained in the oral partition between the original Sungappa and Pethamunusamy. He would also submit that the first appellate court is not correct in holding as if

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the plaintiffs have not proved their possession. According to him, in addition to Ex.A.1 sale deed in respect of 10 cents of lands purchased by them from Sungappa, the plaintiffs have in fact produced the Kanthayam receipt under Ex.A.4 apart from the patta passbook under Ex.A.5 standing in the name of the plaintiffs and the first appellate court has not taken the same into consideration. He would also submit that the learned first appellate judge having narrated about the contents of Ex.A.2, which is equivalent to Ex.B.1 has failed to appreciate the contents contained therein but wrongly came to the conclusion as if the plaintiffs have not proved that their predecessor in title Pethachinnappa was allotted 30 cents under oral partition between Pethachinnappa, Venkataramanappa and Chinnamunusamy.

12. On the other hand, learned counsel appearing for the respondents while supporting the judgement of the first appellate court would submit that if really the claim of the plaintiffs were as per the oral partition between the three brothers, namely, Pethachinnappa, Venkataramanappa and Chinnamunusamy nothing prevented them in proving with a tangible evidence to show that Pethachinnappa was allotted 30 cents along with 2 Tamarind trees, especially in the circumstance that the defendants have denied such oral partition.

13. A reference to the Trial Court Judgement shows that the learned Trail Judge has in detail considered not only the contents of Ex.A.1 and Ex.A.3 but also taking into consideration the contents of Ex.B.1 relied upon by the defendants themselves which was also marked on the side of the plaintiffs as Ex.A.2 under which Mathanagiriyappa has purchased the property in which it is clearly stated that the brother of Venkataramanappa, namely, Pethachinnappa was in fact allotted 30 cents of land. That apart, the Trial Court has also relied upon Ex.A.4 and A.5 and came to the conclusion that it is not only the claim of the plaintiffs that there was an oral partition under which Pethachinnappa was allotted 30 cents and that they have been in possession and grated the decree.

14. On the other hand, a reference to the judgement of the learned first appellate judge shows that in fact the learned first appellate judge has referred to Ex.B.1 including the contents contained therein. In this regard it is relevant to point out that it is not in dispute between the parties that original Sungappa and Pethamunusamy who were owning 1.80 acres of land among themselves have divided by oral partition by allotting each 90 cents of lands. The question is as to whether the 90 cents of land allotted to Sungappa was orally partitioned between his three sons Pethachinnappa, Venkataramanappa and Chinnamunusamy. It is the case of the defendants themselves that in an oral partition among the three brothers Venkataramanappa was given 60 cents and Chinnamunusamy was allotted 30 cents while Pethachinnappa was not given any property. Therefore, it is not seriously in dispute that there was no oral partition between the three brothers. The only dispute raised by the defendants is that among the three brothers Pethachinnappa was not allotted any property.

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15. On the other hand, as correctly narrated by the learned first appellate judge about the contents of Ex.B.1 which is equivalent to Ex.A.2 marked on the side of the plaintiffs which is the sale deed executed by Chinnamunusamy in favour of Mathanagiriyappa wherein it is clearly stated that the other brother Pethachinnappa has been allotted 30 cents of land. It is relevant to point out that Ex.A.2 which is equivalent Ex.B.1 sale deed itself is in respect of 30 cents allotted to Chinnamunusamy under partition between Pethachinnappa, Venkataramanappa and Chinnamunusamy and the said Chinnamunusamy who is one of the brother among the three, while executing sale deed in favour of his brother's son Mathanagiriyappa who is the son of Venkataramanappa categorically states in Ex.A.2, which is equivalent to Ex.B.1 stating that the other brother Pethachinnappa has been allotted the 30 cents of land. When that is admitted position as it is seen in the first appellate court judgement itself, I do not see any reason in the finding of the learned first appellate judge that the plaintiffs have not proved that their predecessor in title Pethachinnappa was allotted 30 cents in the oral partition between their brothers, namely, Pethachinnappa, Venkataramanappa and Chinnamunusamy.

16. Therefore, it is clear that the learned first appellate judge has not correctly construed and taken into consideration the contents of Ex.B.1, which is marked on the side of the plaintiffs as Ex.A.2 which itself is sufficient to prove about the oral partition under which 30 cents was allotted to the predecessor in title of the plaintiffs. That apart the learned appellate judge having held that the plaintiffs have not chosen to produce adangal extract and examine the Village Administrative Officer has failed to take into consideration that in fact the plaintiffs have filed the Kanthayam receipt marked as Ex.A.4 apart from the patta Ex.A.5 dated 01.05.1975 standing in their name. While so there is absolutely no difficulty to come the conclusion that the learned first appellate judge has not correctly appreciated the contents of the document filed by the defendants themselves marked as Ex.B.1, which was also marked on the side of the plaintiffs Ex.A.2 and in view of the same an error apparent has been committed.

17. In view of the above said circumstances, the judgement and decree of the first appellate court is set aside and the judgement of the Trial Court confirmed and the appeal stands allowed with costs.

nbj

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Asst.Registrar

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Sub Asst.Registrar

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To,

1. The Subordinate Judge,
   Krishnagiri (with records)

2. The District Munsif,
   Hosur.

3. The Record Keeper,
   V.R.Section, High Court, Madras.

+1 cc to M/s. V.Nicholas, Advocate Sr.No.16956.

+1 cc to M/s.D.Shivakumaran, Advocate Sr.No.16672.

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